IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT

Jetha Ram & Ors. vs. State of Rajasthan & Ors.
(D.B.Civil Writ Petition No.2195/05)

Date of Judgment: 14th November, 2006.

PRESENT

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE JUSTICE SHRI MOHAMMAD RAFIQ

Mr.K.S.Gill, Advocate for the petitioners.
Mr.S.P.Sharma, Advocate for respondent no. 2.
Mr.P.S.Bhati, Advocate for intervenor.

BY THE COURT:(PER HON'BLE MR.MOHAMMADRAFIQ),J

This writ petition as a public interest litigation has been filed by four petitioners who are all residents of Ward No.12 in municipal area of Rawatsar in district Hanumangarh. They have raised a grievance with regard to public place close to their residence which according to them was proposed to be reserved for a public park by the Municipal Board itself. The Municipal Board invited objections from the general public by issuing a notice in that behalf on 30.4.1988 in the newspaper.

One Rampratap @ Patram s/o Chanduram filed a suit for permanent injunction in the Court of Civil Judge(J.D.), Rawatsar in regard to the part of the aforesaid land. The said Court by its judgment dated 20.11.2000 dismissed the above suit. The Court on appreciation of evidence recorded a finding that the land in dispute was a municipal land meant for public chowk which was proposed to be reserved for a public park. The above named Rampratap thereafter filed an appeal before the Additional District Judge, Nohar which was also dismissed on 20th September, 2003. The petitioners have alleged that respondent no. 5 Ashok Kumar, who happens to be son of respondent no. 6 Rajkumar, the present Chairman of the Municipal Board, Rawatsar, has made encroachment upon part of the aforesaid land. Shri Jetha Ram(petitioner no. 1 herein) submitted an application to Legal Service Clinic, Rawatsar where before the Municipal Board took the stand that they have already initiated action for removal of the encroachment. The said Legal Service Clinic accordingly decided the matter by its order dated 5.3.2005. Respondents no. 5 and 6 are closely connected with Shri Dharmendra Mochi, respondent no.7, who

is a Member of Legislative Assembly from Rawatsar and all of them belong to same political party. They in connivance with one another are bent upon grabbing the said land which is meant for a public park. The petitioners also submitted a representation to the Sub Divisional Magistrate on 23.2.2005 followed by another representation to the Grievance Cell in the office of Chief Minister on 10.3.2005. It was only thereafter that the Municipal Board registered a criminal case against the respondent no. 5 and F.I.R. No.44/05 was registered against him with Police Station, Rawatsar for offence u/s 203 of the Rajasthan Muinicipalities Act. Apart from the encroachment made by respondent no. 5, the petitioners are also aggrieved by the resolution of the Municipal Board passed in its meeting held on 22.3.2003 wherein it has been resolved to construct urinals/toilets on the land in dispute and not to use the said land for park but keep it as open land to be used for rehabilitation of the small time traders by constructing kiosks etc. It has therefore been prayed that the aforesaid resolution dated 22.3.2003 be declared null and void and the respondent no. 2 be directed to develop the land in dispute as only public

park.

The Municipal Board has contested the matter and raised certain preliminary objections regarding maintainability of the writ petition. It has been stated that although a public notice was issued on 22.3.1988 inviting objections for setting up a public park on the land in question but no final decision to set up such public park there was ever taken. With the passage of time however part of the land was encroached upon by certain persons who installed some small cabins/kiosks to earn their livelihood. When the Municipal Board took steps to remove those encroachments, those persons agitated the issue before the District Collector, who asked for their rehabilitation. It was thereupon that the Municipal Board by its resolution dated 22.3.2005 decided to provide them alternative place for their rehabilitation under Jan Sathi Rozgar Yojana. The Municipal Board simultaneously also decided to construct public toilets/urinals behind these kiosks on the open land opposite the residence of the petitioner Jetha Ram and therefore they have filed the present writ petition styled as

public interest litigation.

The stand of the Municipal Board is that there are already two public parks in the vicinity of the land in dispute. While one is 350 ft. away and another is at a distance of 1050 ft. The first one is very close to the residence of petitioner Jetha Ram whose interest lies in the disputed land being kept open and not used for any other purpose. It has been stated that subsequent to the aforesaid resolution of the Board, the respondents have now successfully removed entire encroachments from the land on 8.7.2005 and copy of the report to this effect submitted to the Additional Collector has been placed on record to substantiate this.

When the matter was taken up for hearing on 9th October, 2006, learned counsel for the respondent no. 2 informed the Court that when the cabins/kiosks have already been removed from the land in question, there was no longer any encroachment and therefore the petition be dismissed as having become infructuous. This was opposed to by the

learned counsel for the petitioner who stated that aforementioned Rampratap @ Patram continues to be in possession of part of the said land as tress-passer. Learned counsel for the Board then informed that said Rampratap had earlier filed an injunction suit which he lost in the trial Court then thereafter in the First Appellate Court as already noticed above. But then, the learned Single Judge of this Court while dismissing his S.B.Civil Second Appeal No.348/04 on 7.2.2005 gave him a liberty to "initiate appropriate litigation to identify his land, and maintain his possession". It is owing to this liberty granted by the Court that he has again filed a civil suit in which the Court has passed an injunction order and therefore there is difficulty in removing his encroachment.

Even though the aforementioned Rampratap was not impleaded as party respondent in the writ petition but he was allowed to intervene in the matter by order of this Court dated 6th July, 2005 and he has placed on record his version in the matter by filing written submissions.

Having heard learned counsel for the parties and the intervenor, we are satisfied that the land in dispute is in fact a public land vesting in the Municipal Board, Rawatsar. Although, initially there was a move by the Board to earmark it for the purpose of public park but in course of time when certain encroachments were made, the Board by its unanimous resolution decided to keep it as an open land and use part of it for construction of ten toilets/urinals which in our view is again a public purpose. The Board being a democratically elected body if it in its discretion decides to use the land for a particular purpose and if such a decision involves deviation from its earlier stand in making change of the land use from one purpose to another, there can be no case for interference by this Court in writ jurisdiction in the name of public interest more particularly when both the land use are for public purpose. On facts it is asserted by the Board that there already exist two more public parks at a very close distance from the land in question. These are administrative matters having tinge of policy, whether to have a public park and where to have it, involving variety of considerations including

competing needs vis-a-vis public interest. This Court in exercise of its power of judicial review would not like to enter into the domain of the administration till the action complained of is so outrageously shocking as to be manifestly opposed to public interest.

In so far as the part of the grievance with regard to non-removal of the encroachment made by Rampratap is concerned, while we appreciate the difficulty of the Municipal Board that they cannot remove such encroachment till the injunction order continues in his favour. Having however glanced through the judgment dated 20.11.2000 passed by the Civil Judge(J.D.), Rawatsar as also the judgment dated 10.9.2003 passed by the Additional District Judge, Nohar rejecting his first appeal, we on comparison of the facts and findings contained therein and the pleadings of said Shri Rampratap in the plaint of the suit now filed by him (Annex.R/1 to his written submissions) find that the earlier litigation wherein he lost up to this Court in second appeal in which judgment passed by the trial Court became final and the

present suit now filed not only pertain to the same piece of land but also raise substantially the same issue and between the same parties. We are afraid, if such a suit may not be barred by the principles of res judicata. We however do not wish to comment much on that aspect , for the learned Single Judge while dismissing the second appeal of said Shri Rampratap has granted him the liberty to "initiate appropriate litigation to identify his land and maintain his possession". This in fact has resulted in giving another lease of life to this litigation which had otherwise came to an end with the dismissal of the said second appeal. In the facts of this case, however we deem it appropriate to direct the Civil Judge(J.D.), Rawatsar to complete the trial of the aforesaid civil suit and decide the same within two months from the date of receipt of a copy of this judgment and if necessary, take up the proceedings thereof on day to day basis. The writ petition is disposed of with the aforesaid direction. A copy of this order may be forwarded to the Civil Judge(J.D.), Rawatsar.

(MOHAMMAD RAFIQ),J. **(S.N.JHA),C.J.**

Aditya/-